

foreign subsidiary of a domestic corporation, see the Regulations Relating to Contract Coverage of Employees of Foreign Subsidiaries (part 36 of this chapter).

§ 31.3121(o)-1 Crew leader.

The term “crew leader” means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person. For purposes of this chapter a crew leader is deemed to be the employer of the individuals furnished by him to perform agricultural labor, after 1956, for another person, and the crew leader is deemed not to be an employee of such other person with respect to the performance of services by him after 1956 in furnishing such individuals or as a member of the crew. An individual is not a crew leader within the meaning of section 3121(o) and of this section if he does not pay the agricultural workers furnished by him to perform agricultural labor for another person, or if there is an agreement between such individual and the person for whom the agricultural labor is performed whereby such individual is designated as an employee of such person. Whether or not such individual is an employee will be determined under the usual common-law rules (see paragraph (c) of § 31.3121(d)-1).

[T.D. 6744, 29 FR 8320, July 2, 1964]

§ 31.3121(q)-1 Tips included for employee taxes.

(a) *In general.* Except as otherwise provided in paragraph (b) of this section, tips received after 1965 by an employee in the course of his employment shall be considered remuneration for employment. (For definition of the term “employee” see 3121(d) and § 31.3121(d)-1.) Tips reported by an employee to his employer in a written statement furnished to the employer pursuant to section 6053(a) (see § 31.6053-1) shall be deemed to be paid to the employee at the time the written

statement is furnished to the employer. Tips received by an employee which are not reported to his employer in a written statement furnished pursuant to section 6053(a) shall be deemed to be paid to the employee at the time the tips are actually received by the employee. For provisions relating to the collection of employee tax in respect of tips from the employee, see § 31.3102-3.

(b) *Tips not included for employer taxes.* Tips received after 1965 by an employee in the course of his employment do not constitute remuneration for employment for purposes of computing wages subject to the taxes imposed by subsections (a) and (b) of section 3111.

(c) *Tips received by an employee in course of his employment.* Tips are considered to be received by an employee in the course of his employment for an employer regardless of whether the tips are received by the employee from a person other than his employer or are paid to the employee by the employer. However, only those tips which are received by an employee on his own behalf (as distinguished from tips received on behalf of another employee) shall be considered as remuneration paid to the employee. Thus, where employees practice tip splitting (for example, where waiters pay a portion of the tips received by them to the busboys), each employee who receives a portion of a tip left by a customer of the employer is considered to have received tips in the course of his employment.

(d) *Computation of annual wage limitation.* In connection with the application of the annual wage limitation (see § 31.3121(a)(1)-1), tips reported by an employee to his employer in a written statement furnished to the employer pursuant to section 6053(a) shall be taken into account for purposes of the tax imposed by section 3101. However, since tips received by an employee in the course of his employment do not constitute remuneration for employment for purposes of the tax imposed by section 3111, they are disregarded for purposes of the annual wage limitation in respect of such tax. Accordingly, separate computations for purposes of the annual wage limitation